

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, January 9, 2002, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Mary Bills, Jon Carlson, Steve Duvall, Linda Hunter, Gerry Krieser, Patte Newman, Greg Schwinn, Cecil Steward and Tommy Taylor. Kathleen Sellman, Ray Hill, Mike DeKalb, Jason Reynolds, Becky Horner, Brian Will, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Greg Schwinn called the meeting to order and requested a motion approving the minutes of the meeting held December 12, 2001. Duvall moved approval, seconded by Carlson and carried 7-0: Carlson, Duvall, Hunter, Krieser, Newman, Schwinn and Steward voting 'yes'; Bills and Taylor absent.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION**

##### **BEFORE PLANNING COMMISSION:**

January 9, 2002

Members present: Bills, Carlson, Duvall, Hunter, Krieser, Newman, Schwinn, Steward and Taylor.

The Consent agenda consisted of the following items: **CHANGE OF ZONE NO. 3348, FINAL PLAT NO. 01023, ANNEXATION NO. 01009, STREET AND ALLEY VACATION NO. 01018, COMPREHENSIVE PLAN CONFORMANCE NO. 01004 AND STREET AND ALLEY VACATION NO. 01021.**

**Item No. 1.4, Street and Alley Vacation No. 01018** was removed from the Consent Agenda and scheduled for separate public hearing. Carlson moved to approve the remaining Consent Agenda, seconded by Newman. Motion to approve carried 9-0: Bills, Carlson, Duvall, Hunter, Krieser, Newman, Schwinn, Steward and Taylor voting 'yes'.

**STREET & ALLEY VACATION NO. 01018**  
**TO VACATE THE EAST 18' OF NORTH 8<sup>TH</sup> STREET**  
**AND THE SOUTH 6' OF "R" STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 9, 2002

Members present: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn.

Staff recommendation: A finding of conformance with the Comprehensive Plan, with conditions of approval.

This application was removed from the Consent Agenda and had separate public hearing due to a revised staff recommendation.

Jason Reynolds of Planning staff revised the staff recommendation, deleting Conditions #1.2 and #1.3, which conditions had been satisfied with the Public Works Department.

Proponents

Tom Huston appeared on behalf of the applicant, Journal Star Printing, and agreed that they had worked out the two conditions with the Public Works Department prior to submittal.

There was no testimony in opposition.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 9, 2002

Carlson moved to approve the revised staff recommendation, finding the proposed street vacation to be in conformance with the Comprehensive Plan, seconded by Bills and carried 9-0: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn voting 'yes'.

**CHANGE OF ZONE NO. 3349**  
**FROM "P" PUBLIC USE TO R-4 RESIDENTIAL**  
**ON PROPERTY GENERALLY LOCATED AT**  
**3023 ARLINGTON AVENUE.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 9, 2002

Members present: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn.

Staff recommendation: Approval.

Jason Reynolds of Planning staff submitted an email in opposition, alleging that this change of zone would allow a 12-plex to be built on the property. The primary objections in the email are parking problems and care and maintenance of the property. Reynolds advised that the R-4 zoning district would permit one two-family structure per lot, or a total of two duplexes.

Proponents

**1. Jason Reynolds of Planning staff** explained that this is an application by the Director of Planning to correct a mapping error. The subject lot is mostly vacant and is zoned "P" Public Use; however, the ownership records indicate that it has been in private ownership since about the 1920's. The line on the zoning map was drawn in error and the zoning on this property should reflect the ownership pattern. Therefore, the request is to change the zoning to R-4 to match the surrounding area.

Steward inquired why the question has been raised at this time. Reynolds advised that the subject lot was sold recently and through the title search, the new property owner became aware there might be a zoning question on the lots.

Schwinn confirmed that this application is being made to change the zoning to be in conformance with the rest of the neighborhood. Reynolds concurred.

Hunter noted that most of the homes in the area are single family. Reynolds acknowledged that could be true, but the entire neighborhood is zoned R-4 (which used to be the old 2-family zoning district). Reynolds did not have the data to support the declaration that the area is mostly single family residential.

Carlson noticed a "for sale" sign on the property and wondered whether the sale had actually occurred. Reynolds indicated that the last time he went by the property, the "for sale" was covered with a "sold" sign. He didn't have any further information.

Opposition

**1. Marty Hager**, 2810 Sumner, a Member of the Antelope Park Neighborhood Association Board, testified in opposition. He realizes that this seems like a straight-forward application, but he believes this change has wider implications to the neighborhood. Antelope Park is an older established neighborhood with a lot of single family homes; however, they do have more than their fair share of duplex, tri-plex and apartment buildings. He urged the Commission to look at this case, not only as a matter of fact, but to consider the larger implications of changing the zoning from P to R-4. He also believes that Antelope Park was just made a "target" area in the 2000 Census 10 days ago. The

subject property was put on the market prior to that. Hager urged the Commission to not make a quick judgment on this application because the Antelope Park Neighborhood Association is in the process of making application to change the entire neighborhood to R-2 to help keep the influx of slip-ins at a minimum.

**2. Doug Beals**, 2829 Franklin, testified in opposition. The City of Lincoln has always prided itself in quality and character of older established neighborhoods as set forth in the Comprehensive Plan. Back in the 1970's, we watched slip-in apartments invest in the Near South when there were no zoning controls. The slip-ins did change the character of the neighborhood. Since that time, the city has recognized the need to maintain the character of these neighborhoods. If this change of zone happens, he believes that the Antelope Park Neighborhood will be subject to blight. If this project moves forward, it sends a message that this neighborhood does not deserve the same consideration as other neighborhoods. Increasing the amount of rental property will change the character of the neighborhood in terms of the quantity and the quality. Personally, as the father of two small children, he is concerned about the additional traffic that would be generated near the park. If this area needs to be redeveloped, it should be single family, affordable housing. It is up to the Planning Commission to see that the character of the neighborhood is maintained without subjecting the residents to more rental property in this area.

**3. Kathleen Hejl**, 1745 Jefferson, testified in opposition. Her husband is President of the Antelope Park Neighborhood Association and is on active duty in the Army. She re-emphasized the traffic problems that could be created by this change of zone. This property is at a dead-end, ½ block east of Jefferson Avenue, right before you get to the bike path. There is a lot of foot traffic using the Arlington Street access to the park and the trail. There is already a traffic problem on Jefferson Avenue in both volume and speed. The number of the new units and the size proposed will likely draw at least 8 drivers into the area, and probably more. Hejl is a mother of three children and safety is a concern. The neighborhood is trying to maintain as many single family units as possible to minimize increased traffic and other problems.

**4. Lisa Good**, 3036 Franklin Street, serving as Interim President of the Antelope Park Neighborhood Association, testified in opposition. There is 100% consensus of the Board members in opposition. Antelope Park is the smallest neighborhood association in the City. Most of the neighborhood was built in the late 1910's and early 1920's, with mostly small bungalows. The Antelope Park neighborhood is comprised of approximately 500 homes, 61% being owner occupied (from 1990 Census). The residents of the neighborhood are mixed, with many older, long term residents (those who have lived in the neighborhood 20+ years). This neighborhood is starting to turn with the older residents going to care facilities.

This is opening up single family homes to new prospective buyers. Generally, the neighborhood has been fortunate that families with children have found this an attractive, safe and viable place to live. There is overwhelming participation in the neighborhood association because of its smallness. The association recently completed a reforestation project where they replaced 70% of the street trees lost in the ice storm of 1996. Good stated that she is voicing the opinion of 50+ signatures in opposition to this change of zone in hopes of preserving the single family character of this neighborhood. Approximately 15-20 individuals stood in the audience in opposition.

Good requested that the Planning Commission defer this change of zone while the neighborhood investigates some long terms solutions for the neighborhood zoning. We have just learned that we are now a target neighborhood. We have a committee working now on the zoning application for the neighborhood that is due tomorrow. Hopefully, they can identify parts of the neighborhood that would comply with R-2 zoning as opposed to R-4.

Steward noted on the map in the staff report that there are a number of similar P zoned lots to the north of the lot in question, which would be across Arlington Avenue and east of Jefferson, between Sumner and Arlington. He wondered whether the neighborhood would have similar concerns about that property. Good stated that it has come to their attention that there is a home for sale at 2929 Everett which is similarly located on a dead-end street with abutment to P zoning. In the interest of safety for bike and trails, the neighborhood wonders if it might not be wise to restrict the number of persons living close to those public access points.

(It was then noted that those particular lots north of the lot in question are part of a city reservoir and should never be developed).

Schwinn inquired about the declaration that this is a “target” neighborhood. Good advised that they have been informed verbally by the Urban Development Department that they may be a target area but they have not received anything official.

**5. Bill Price**, 1810 Jefferson Avenue, testified in opposition. The neighborhood association has expressed its concern about this change of zone and the proposed development of the property. It is the neighborhood’s understanding that the developer plans to build two duplexes with a total of 12 bedrooms, resulting in 24 additional people living in this half block. If this development is allowed, there would be a 100% increase in population on ½ a city block. This will redefine the living environment of this entire neighborhood. It is not pleasing to see high density and it does not promote neighborhood improvement. Another issue is access. There is no street along one side of the block and no alley, resulting in only one access for the 24+ new residents. Even with off-street parking, there will be increased noise and more parking on the street, causing neighborhood hazards. This will be inconsistent with the profile of this ½ block. Allowing such a large development is like putting a skyscraper on

a prairie. Allowing this development will set precedents for further development of large-unit housing in the neighborhood. Price advised that the neighborhood association will be applying for new zoning to maintain the family atmosphere and integrity of this neighborhood. He requested that the Planning Commission defer the decision on this change of zone request to allow the neighborhood to research options towards saving and improving this neighborhood.

**6. Walt Radcliffe**, 1701 So. 33<sup>rd</sup>, on the east side of the bike path, testified in opposition. He urged the Commission to consider deferring this decision so that the suggested R-2 can be considered. This is a very active and viable neighborhood association and the Commission would be well-advised to let them come forward with their ideas and suggestions.

#### Staff questions

The Commission asked the Urban Development Department to respond to the declaration of this neighborhood as a “target” area. Marc Wullschleger, the Director of the Urban Development Department, hopes what he said to the neighborhood did not get misconstrued. At this point we’re unable to come out with all of our guns blazing because we have not yet gotten the census information. Urban Development has asked Neighborhoods, Inc. to go in and look at the property but for various reasons they have opted not to consider this property. The two biggest reasons were 1) financial--that it was tough to do because they would lose money on it; and 2) it was not in a “low-mod” area. Most of the projects they do are in low-mod areas. They are only allowed to do 4-6 properties on an annual basis.

Wullschleger advised that Urban Development has had ongoing discussions with the buyer of the subject property and Urban Development has made a verbal offer to step in and buy the property if he did want to sell it. Urban Development could step in and do that if need be.

Steward wondered whether it would matter to Urban Development what the zoning was in that circumstance. Wullschleger indicated that zoning might possibly be an issue. Under our “troubled property program”, we would go in. If Neighborhoods, Inc. did undertake the property, they would tear the house down and build two houses on the two lots that are there, possibly a Habitat for Humanity house, and possibly a Nebraska Horsing Resource house, or maybe even both. They would be single family dwellings.

Steward asked Wullschleger to define “low-mod” and the ramifications of that designation. Wullschleger stated that “low-mod” would apply to a family of four with maximum gross income of \$49,450.00. To qualify as a “target” area, the majority of the neighborhood has to be low-mod. We have several neighborhoods in the core of Lincoln that are low-mod and Wullschleger very much expects that the Antelope Park neighborhood will be declared low-mod in the new census information anticipated to be released the first quarter of this year.

Carlson sought confirmation that regardless of the “low-mod” designation, Urban Development is prepared to purchase the property from the owner. Wullschleger concurred and Urban Development has discussed this with the current owner; however, he does not like their offer.

Carlson wondered whether there is anything that would make it difficult to build single family. Wullschleger agreed that the property is very much suited for single family. To build another single family house, however, they would have to adjust the lot lines or tear the house down because the existing house is too close to the lot line to have the required setback, but there are two full-sized lots.

Rick Peo, City Law Department, interrupted the testimony to advise the Commission. He foresees a problem with deferring this action. It must be remembered that this is a mapping error. The property should not be zoned “P” Public Use because it is under private ownership. P zoning does not apply to privately owned property. Essentially, we have a property without zoning regulations on it and he does not believe a building permit could be denied at this time. Secondly, the property was “B 2-family” when the zoning designations were changed. Everyone else in the neighborhood that was zoned “B 2-family” got R-4 and this property should have become R-4 at that time as well. This property owner is entitled to R-4 zoning. To create any other type of zoning would be reverse spot zoning, i.e. singling out an individual and not allowing him the same development rights as other owners. The R-4 gives him the same rights to develop that anyone else in the neighborhood has. If the whole neighborhood comes forward and looks at downzoning, that can be considered, but this application should not be deferred in anticipation that that might occur.

Peo further pointed out that the city went down this path one other time on a commercial situation where the issuance of a use permit was delayed. It was challenged in court and the city lost. Deferral of this change of zone application would create that same type scenario, in his opinion.

Newman wonders whether it is possible that this property should have been zoned R-2 instead of R-4. Peo reiterated that the whole area was zoned “B 2-family” and all of it was converted to R-4, except this one lot got zoned P in error. We didn’t have the same classifications at that time. There are more classifications today than there were then.

Carlson posed the question: At what point does raw ground all of a sudden receive a particular designation and at what point do we decide that designation is in perpetuity? Peo’s response was that once you establish a zoning criteria of surrounding properties, similar properties have to be treated the same.

Ray Hill of Planning staff offered further explanation. The city did not have the “P” Public Use district before 1979, and when the line was drawn to distinguish the park from the private property, the line was drawn in the wrong place. It is a mapping error. Before 1979, the 2-

family zoning district (which is comparable to today's R-4) was the same character as a "B 2-family". The proper conversion was B 2-family to R-4, which happened. The mapping error occurred because the line simply was not drawn in the right place and that is why this property is zoned P today. This area has been zoned for 2-family for a long time, probably at least as far back as 1959.

Hunter believes this goes from a history of two-family to the potential of multi-plex. Hill clarified that R-4 allows two-family dwellings the same as the previous B 2-family.

Schwinn pointed out that all this discussion is hearsay. We don't have anyone saying they are going to build a duplex. Hunter was asking about the potential for more than a duplex and she has been informed that there is not.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 9, 2002

Newman moved to place this change of zone on pending because we do not know the history. Motion was seconded by Carlson. If there was a designation created after a neighborhood was designated R-4 that is more suitable for the neighborhood such as R-2, Newman does not understand why the Commission can't put this on pending until we see if that R-2 is not a more appropriate zoning for the neighborhood.

Carlson's question is: If the P is a mistake, then what's the right zoning? The character of the surrounding property and the surrounding neighborhood is R-4.

Steward stated that he has substantial empathy with the concern about what is possible on this site, but he also has concern about the technical position that this deferral action will put the city in. What is the proper zoning designation? The only proper choices are P or R-4 under current zoning map conditions. And that surely doesn't fit what the neighbors would prefer, but this is not a single family neighborhood and has not been for some time. He believes that all due diligence should be performed to investigate the downzoning process, but he does not believe this property can be held hostage while that is transpiring because the rest of the neighborhood is already designated R-4. He will vote against placing this application on pending.

Hunter disagrees with the idea that because it was done that way is the way it has to be done now. It no longer fits what has been developed. How something got to P when P was not even a designation means there is something a little bit more behind this property's development than the history shows. She will support deferral.



Schwinn suggested that the property was most likely owned by one previous owner and he didn't even know it was zoned P. Then, upon sale, the P zoning was discovered in the title search and it was required to be brought into proper zoning classification in order to close the sale. The P designation is not appropriate for privately owned property. This is privately owned property with an erroneous zoning. He will vote against deferral because he doesn't think there is another option. Voting to defer this puts the city in a legal position that we cannot support and we've already lost a similar case.

Carlson stated that he does not disagree that P is incorrect zoning. He believes it should have some kind of residential zoning, but he does not know that the question of which residential zoning district has been answered for him. That is why he will vote to defer. He believes the surrounding neighborhood character is R-2.

Upon further discussion, the motion was amended to deferral for two weeks, as opposed to placing the application on pending.

Schwinn called the question.

Motion to defer for two weeks, with administrative action scheduled for January 23, 2002, carried 6-3: Bills, Hunter, Carlson, Taylor, Newman and Krieser voting 'yes'; Duvall, Steward and Schwinn voting 'no'.

The public hearing has been closed. There will be no further public testimony on January 23, 2002, other than questions by the Commission to staff.

**CHANGE OF ZONE NO. 3297;**  
**CHANGE OF ZONE NO. 3298;**  
**PRELIMINARY PLAT NO. 00029,**  
**PINE LAKE HEIGHTS SOUTH 4<sup>TH</sup> ADDITION;**  
**and**  
**USE PERMIT NO. 134,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 27<sup>TH</sup> STREET AND YANKEE HILL ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 9, 2002

Members present: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn.

Staff recommendation: Approval of Change of Zone No. 3297; approval of Change of Zone No. 3298, with amendment to provide an O-3 buffer between the B-2 and R-3 districts at South 40<sup>th</sup> Street and Yankee Hill Road; conditional approval of the preliminary plat; and conditional approval of the use permit.

Brian Will of Planning staff submitted proposed revisions to the conditions of approval on the preliminary plat.

Proponents

**1. Kent Seacrest** appeared on behalf of the applicant. What is being requested in these applications started in 1999 with a big annexation area incorporating a lot of new innovative things which have not worked. We tried to put the B-2 neighborhood center up at the mid-section and the neighborhood to the north did not want B-2 and did not want it up against the park. We tried to do the first “new urbanism” type center, and our topography was determined to be too steep to do garages in the alley. The consultants suggested that the property needed to be flatter so people would not have to carry their groceries up the stairs. We tried to do the super arterial (Yankee Hill Road) with little access to it. We were going to build a new internal arterial road network to connect the B-2 and urban center. When the city lost its enthusiasm for the super arterial, we did not want to do the internal arterial road. These applications change the previous configuration slightly.

The issue is what to do with the B-2. There is a ditch and staff has suggested that the property on one side of the ditch be O-3 so that the B-2 is buffered by O-3. The applicant seeks approval to do the whole thing B-2 with the R-4 and R-3 buffer. Today we are debating whether it is best to have B-2 to O-3 to R-4, or B-2 directly to R-4. The applicant would prefer B-2 directly into R-4 because it is a better transition. R-4 apartments have worked well up against shopping areas and the larger B-2 gives more layout potential with more open space and green space. The applicant also feels strong about the fact that B-2 has bigger setbacks. We are putting a public front yard up against the R-4 so that the B-2 setback would be 50'. O-3 would only require a 10' setback against the residential zoned land.

Seacrest also pointed out the important fact that this applicant owns all of the land around this project and they are not afraid of buffering themselves from their own B-2. In addition, B-2 requires a use permit.

Seacrest pointed out that there are 33 instances in Lincoln that have B-2 on the corner like this. 25 times, or 75% of the time, we have buffered them with an R-1, R-2 or R-3. This application proposes buffering with R-3 and R-4. So this is really nothing different. A total office buffer around B-2 has never been done. Seacrest also pointed out that the requested B-2 zoning does allow office use.

Seacrest went on to state that the applicant has spent a fortune negotiating the off-site road improvements and doing traffic studies based on B-2. The applicant is paying for the road

improvements based on the B-2 zoning. To now be told to cut back to O-3 does not refund the cost of the traffic work that has been done. Seacrest urged that the bulk of the buffering of the B-2 can be done with the R-4 and R-3. The applicant is proposing an outlot giving 10 more feet on the R-3.

The second issue is the conditions on the preliminary plat. Seacrest submitted proposed revisions to the conditions of approval. He believes they have worked out all of the changes with the staff, except for Condition #1.1.3, which requires the applicant to revise the site plan so that there are no double frontage lots. Seacrest purports that this is a unique fact pattern because the old configuration of street layouts was working well. Giving up the double frontage will result in loss of 5 lots and they would end up doing more concrete, more water and more sewer. Seacrest suggested that not only does the private sector lose by getting rid of double frontage, but the public loses because they will have more streets, water and sewer to worry about. Seacrest suggested a compromise with an amendment to Condition #1.1.3 to put in a 10' outlot landscaped rather than the double frontage lots--basically a roadway perimeter.

Seacrest also requested to add language to the staff's proposed additional Condition #1.1.15: "In the event a future Yankee Hill Road intersection or related right turn lane does not meet sight distance or proper safety standards,.....", then we either relocate South 33<sup>rd</sup> Street and South 37<sup>th</sup> Street at Yankee Hill Road intersections, etc.

There was no testimony in opposition.

### **Staff Response**

Brian Will of Planning staff stated that the largest outstanding issue is relative to the change of zone for the southeast corner. The staff is suggesting that it not go forward as proposed by the applicant largely because we do not know what use is being proposed for that particular corner. Originally, as this was proposed, the amount of B-2 that is being allowed really was to accommodate some new concepts; however, that has changed and the stance now is that the Comprehensive Plan indicates we are looking for two 20-acre neighborhood centers in this area. The amount of B-2 being shown is in excess of that. We do not see justification for this at this time without any specific proposal for that corner to be all B-2. The intent of the neighborhood center is to serve the neighbors within that vicinity and we see this application changing the character of the commercial development with all B-2.

Carlson requested to discuss the potential coordination between the R-4 and B-2. Are there opportunities to get new urbanistic or some sort of preferred design that show nice integration between the B-2 and the R-4? Would the use permit re-justify the additional B-2 zoning? Will agreed that a use permit proposal could potentially change the staff recommendation, but it is purely speculation at this point without the use permit.

Steward wondered by what order of magnitude the B-2 has increased over the Comprehensive Plan recommendation. Will stated that neighborhood centers are 20 acres, plus or minus. What is being proposed here is slightly over 50 acres for two neighborhood centers. Seacrest interjected, stating that it is a 3-acre increase from the old pattern to the new pattern. Will went on to state that the original zoning scheme was approved with an overall development concept in mind and that development concept has gone away.

Will clarified that it is only Change of Zone 3298 that affects this southeast corner. Change of Zone No. 3297 rezones all of the property within the limits of the plat to R-3. The use permit is for the southwest corner.

Schwinn asked whether B-2 allows the "big box" retail. Will stated that it would require a special permit.

With regard to the double frontage lots, Will stated that the problem is that the ordinance requires that there be justification in order for staff to make a recommendation to support the waiver to allow double frontage lots. In both cases here, the staff believes that there are some simple modifications that could do away with the double frontage lots. The staff takes the position that the situation can be and should be avoided. There are alternatives that could be easily implemented to do away with the double frontage lots. Therefore, staff does not support that waiver.

Schwinn inquired as to the difference in having the back yard on O-3 and B-2 versus the front yard. Will stated that the staff takes the position that we can assure a greater compatibility of land uses.

Hunter was curious about the transition between B-2, O-3 and R-4. What's the difference between B-2 and R-4 in a situation like at Pioneers and 70<sup>th</sup> where we have HyVee and apartments right next to it? Will agreed that there may not be any difference, but that is part of the problem. We don't know because we don't have a use permit for the southeast corner. We don't have justification without the use permit to do away with what we perceive to be the O-3 buffer between the residential and the B-2 zoning.

Hunter pointed out that there is no buffer on the development at 70<sup>th</sup> & Pioneers. Will was not familiar with the details at 70<sup>th</sup> & Pioneers but he believes there might have been a more comprehensive review of that development project when it was being considered. Ray Hill of Planning staff offered that 70<sup>th</sup> & Pioneers was all part of the comprehensive plan of that site. The developer asked for a reduction of the B-2 zoning in order to put in the apartments. It was all integrated into a total package. Here, we have no site plan to judge whether or not it should be rezoned. Hunter does not believe that having the R-4 setup right adjacent to a B-2

development is not necessarily a bad thing. Hill responded, stating that staff is not saying it is a bad thing – we do not have a site plan to know whether what they are proposing is good or bad.

Carlson then noted that the original application had R-3 next to B-2, so clearly that circumstance can be created. Will concurred, “we just need to see it”.

Will then further explained the proposed amendments requested by staff with regard to the LES easements.

Will agreed with the applicant’s proposed amendments including the additional language to staff’s revised Condition #1.1.15, except that the staff does not agree with the applicant’s proposed amendment to Condition #1.1.3 regarding the double frontage lots.

**Response by the Applicant**

Seacrest pointed out that double frontage lots are legal, with justification. Seacrest believes the applicant has given two justifications: The loss of 5 lots, resulting in more infrastructure at the developer’s expense that the city maintains. The third justification is that reconfiguration results in a four-way intersection that is not allowed. It will also crunch the bike trail.

With regard to the zoning issue, Seacrest asked the Commission to listen carefully. The staff is saying that they do not have confidence with B-2 up against Residential, yet over 75% of the B-2’s have this. That is why there is a 50’ setback on B-2 and a use permit requirement. The other argument is that they don’t have the use permit. On first instinct that makes a lot of sense, but Seacrest intellectually rejects this thought because if he has to rely on the Comprehensive Plan to tell his neighbors he’s putting retail there, it doesn’t work. He would rather tell them what the zoning is. He wants to put the neighbors on notice that there is B-2 coming. When you balance the public and private interest, it is best to zone it. There is still a public hearing on the use permit and there are setback requirements.

Carlson indicated that he likes to see the B and the R together if the uses are integrated. He likes the idea with neighborhood commercial oriented to the neighborhood. He is hearing staff say that the original proposal had the acreage that the Comprehensive Plan called for and then some additional acreage specified because it was going to be something extraordinary. Seacrest interrupted and disagreed. He clarified that they originally brought in a whole 500 acres called Wilderness Ridge Golf Course, without a stitch of retail. This piece does have more retail, but we were doing it at the same time we brought in most of the section without any retail. Together we were balancing the Comprehensive Plan standard. Carlson again stated that he likes the idea of the B-2 next to the R-3 if it is designed to work together. Seacrest suggested that the burden will be on the developer to show by a use permit some day that it will not harm the residential neighborhood. We can’t bring the use

permit forward yet because the south half is unsewerable until we open up the next basin, so this corner is going to be there for awhile in its present configuration. We will not be coming in this year with a use permit. We've got to get the new Comprehensive Plan showing the growth and new basin to the south first.

Public hearing was closed.

**CHANGE OF ZONE NO. 3297**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 9, 2002

Duvall moved approval, seconded by Hunter.

Carlson commented that he accepts some of the rationale for expansion of the B-2, but wants the record to reflect that while he thinks you can create a successful integration of the B-2 and whatever R zoning next to it, you clearly have to have the R zoning in order to do that. He requested that the minutes reflect that he is hopeful that we will not end up with a strip (and this has not been suggested by the applicant at all). His support of this particular motion would be with the assumption that the R stays and that we get a creative package that shows integration between those two uses.

Motion for approval carried 9-0: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn voting 'yes'.

**CHANGE OF ZONE NO. 3298**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 9, 2002

Duvall moved approval of the applicant's request (as opposed to the staff's recommended alternative), seconded by Hunter and carried 9-0: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn voting 'yes'.

**PRELIMINARY PLAT NO. 00029**

**PINE LAKE HEIGHTS SOUTH 4<sup>TH</sup> ADDITION**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 9, 2002

Bills moved to approve the staff recommendation of conditional approval, as set forth in the staff report dated December 18, 2001, with the amendments proposed by staff dated January 9, 2002 (adding the language requested by the applicant to new Condition #1.1.15), and with the amendments proposed by the applicant on January 9, 2002, seconded by Hunter. Motion carried 9-0: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn voting 'yes'.

**USE PERMIT NO. 134**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 9, 2002

Hunter moved to approve the staff recommendation of conditional approval, as set forth in the staff report dated December 18, 2001, seconded by Duvall.

Carlson stated that he appreciates the street connections leading back towards the neighborhood because he is a big fan of street connections.

Motion for conditional approval carried 9-0: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn voting 'yes'.

**SPECIAL PERMIT NO. 1629D**

**FOR A GROUND SIGN IN THE FRONT YARD**

**ON PROPERTY GENERALLY LOCATED**

**AT SOUTH 27<sup>TH</sup> STREET AND PORTER RIDGE ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 9, 2002

Members present: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn.

Staff recommendation: Denial.

Proponents

**1. Mark Hunzeker** appeared on behalf of **Whitehead Oil Company**, the applicant. This is an application that arises from some confusion. The applicant had an administrative amendment to this special permit approved back in August which allowed for the convenience store and site plan that is now built and operating. That site plan included two sign envelopes which Whitehead was planning to have for this location, both of which were ground signs located on the two corners adjacent to Porter Ridge Road. When they applied for the permits for the signs, they were told that was not the interpretation being placed on it; that the original special permit had not been modified to permit these additional signs and that it could not have been modified administratively even though they thought it had. Staff is saying they interpreted those two envelopes as being alternative locations for a single sign, although there was no indication of any alternative on the site plan.

Hunzeker advised that the applicant has met with the neighborhood association president, Scott Long, who indicates that the Porter Ridge Neighborhood Association has no objection to these signs and the neighborhood is very enthusiastically pleased with the fact that this facility has been constructed. They indicated they would let us know if there was any objection or question.

Hunzeker does not believe there are any objections other than the staff's recommendation of denial. The only real rationale stated for denial is that someone else might make the same request. Hunzeker agreed that is possible, but that has always been the case. And Hunzeker does not believe it is necessarily the case that you always have to approve those requests. Hunzeker believes this is a location where two signs are justified. The applicant has had these signs on order and they were delivered prior to the application for the permits based upon the previous approval of the site plan back in August. Granted, the applicant understands the staff's interpretation that they cannot administratively amend those regulations to permit an additional sign, but, at the time that the signs were located on the site plan which was approved, the applicant was not aware of the staff's interpretation.

Hunzeker submitted that the applicant has acted in good faith based upon what he believed was an approval of two signs.

Newman inquired as to how many locations Whitehead has in Lincoln where they have two signs. Hunzeker did not know the answer; however, he believes most of them have more than one sign. They typically have a pole sign as well as a ground sign. When this area was developed, the property owners on all four corners of the intersections cooperated on a number of things, one of which was limiting the number of pole signs. It is an area where there has been quite a bit of effort to control the look and the signage, and the developer of the balance of the land has control over the appearance of any signage regardless of whether it is permitted or has to be requested for a waiver. Rick Krueger is the developer of this area and he supports this application.

Carlson asked whether Hunzeker had any response to the letter from the Police Department. Hunzeker stated that the original objection to the placement of the sign was raised in the Public Works comments. The location of the sign has been revised in response to the objection of Public Works and Hunzeker believes that might be where the Police Department objection arose. We have revised the location of the sign to Public Work's satisfaction. It was moved about 10' away from the sidewalk.

**2. Rick Krueger** testified in support on behalf of **South Ridge Village, L.L.C.**, the owner of the property. The proposed sign will not affect any residential owner or tenant in Porter Ridge and he believes it is a reasonable request.

There was no testimony in opposition.

#### Staff questions

Carlson sought confirmation that the Police Department concerns have been satisfied with the relocation of the sign. Dennis Bartels of Public Works agreed that Public Works has been satisfied by the revision. There was not a Police Department representative present.



Carlson asked staff to walk through the administrative amendment and why this was a mistake. Jason Reynolds of Planning staff stated that in general, when someone requests a waiver or exception on a use permit, the city likes to have that waiver explicitly spelled out. In this case, the applicant applied for an administrative amendment to nail down the site plan for the convenience store. It was reviewed by staff and approved in August and there were two sign locations shown on the administrative amendment; however, there were no notes on the site plan or action by City Council for an exception to the sign ordinance, so the staff viewed the two sign locations as "options". If there were to be two sign locations, it would have required a waiver of the H-4 zoning requirements and could not have been approved administratively. Staff is recommending denial because the H-4 zoning requirements permit one sign per lot. The staff takes the position that adding this sign would encourage future tenants of this site to request additional signs. There are a couple of restaurant sites that might have an expectation that they could get additional signage if this application is approved.

Response by the Applicant

Hunzeker reminded the Commission that this is a special permit process solely for the purpose of modifying these requirements. He pointed out that the ordinance does specifically provide for an additional sign if the applicant has 500 feet of frontage. This site is just short of having the 500' to have the additional sign anyway. It is not much of a leap to add one more sign to this particular site.

Schwinn inquired whether the proposed additional sign is the same as the one that currently exists at this location. Hunzeker indicated that it is the same.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 9, 2002

Duvall moved to approve, with the conditions as set forth in the staff report dated December 19, 2001, seconded by Schwinn.

Duvall does not see any difference and he believes they should be able to have the additional sign.

Steward agreed that this probably should be approved, but not without some concern and expression for future reference. If we are going to have sign control ordinances, we need to control the signs. It does make a difference whether or not it is 500'. This situation appears to be an honest set of mistakes, and he believes that is information enough to back up and resist proliferation of similar applications if they might come forward in the future. He will vote in favor.

Carlson noted that there appears to be no opposition and there is no written correspondence from the neighbors. The anecdotal comment is that the neighbors don't appear to have a problem with it, and he thinks that does differentiate it from some proposals that the Commission has seen.

Motion for approval, with conditions, carried 7-2: Duvall, Bills, Carlson, Taylor, Krieser, Steward and Schwinn voting 'yes'; Hunter and Newman voting 'no'.

**SPECIAL PERMIT NO. 1948**  
**FOR A WIRELESS FACILITY ON PROPERTY**  
**GENERALLY LOCATED AT PINE LAKE ROAD**  
**AND HAZEL SCOTT DRIVE.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 9, 2002

Members present: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn.

Staff recommendation: Deferral.

Proponents

**1. Harvey Cooper** testified in support on behalf of Cricket Nebraska Property Company, the applicant. He indicated that they will not resist deferral in order to work with staff on the location of this tower in the cemetery. The applicant would desire to locate a tower on raw land at Lincoln Memorial Park Cemetery somewhere along Pine Lake Road from 20<sup>th</sup> to 14<sup>th</sup>. Cricket's actual search ring places it about ½ mi. north, which is not a suitable location because it would be in a residential area. There is an existing cell tower on LES property; however, it is full and LES does not want to do another pole there, a swap out, or an extension. They also investigated the Shopko site, South Pointe is inappropriate, and South Ridge is inappropriate. Thus the decision to locate further to the east by the cemetery. Staff thought maybe we could use the school but that would also be inappropriate.

Cricket did locate a spot in the cemetery, primarily zoned R-1. However, in working with the staff, they are now in the process of moving the site to the west. There is a maintenance building also zoned R-1, and there is an AG area to the south. He does not disagree with the deferral. This has been an extremely difficult siting. It is a sensitive site and the applicant acknowledges that. Cricket will be resubmitting more details for a different location.

Carlson inquired whether the commercial corners are outside the search ring. Cooper indicated that the commercial corners are inside the ring. The proposed site is actually outside the ring. The ring is residential. There are no flag pole opportunities in the area. We need 150'. We are really stretching by locating in the cemetery.

Hunter is fearful that this will result in having a 150' pole every three miles. Cooper advised that Cricket's philosophy is a little different. As you get maturity with existing towers, the carriers will look for existing towers or existing buildings to locate upon. Mainly it is cheaper and easier to get accomplished. It is only when you have no other choice when you put up a raw land site. A lot depends on topography and what's out there. There is a mind set in the state that cellular towers will not be allowed on state facilities. The federal government takes a different approach.

Hunter asked whether it is permitted to do towers around electric substations, etc. They are unattractive to begin with. Cooper acknowledged that there are cellular towers in substations and adjoining substations in Lincoln. But there is a problem in Lincoln. Some of the LES towers cause a problem because of the ownership of the ground and a lot of times no one knows who owns the ground.

Cooper further discussed the overall objectives and strategies of the Cricket program.

Brian Will of Planning staff indicated that a deferral for a different location would require a four-week delay for proper notification and advertising requirements.

Carlson made a motion to defer, with continued public hearing and administrative action on February 6, 2002, seconded by Hunter and carried 9-0: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn voting 'yes'.

There was no further public testimony.

**COUNTY SPECIAL PERMIT NO. 190,**  
**DEER FIELD COMMUNITY UNIT PLAN**  
**and**  
**COUNTY PRELIMINARY PLAT NO. 01018,**  
**DEER FIELD,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT HIGHWAY 77 AND MARTELL ROAD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 9, 2002

Members present: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn.

Staff recommendation: Conditional approval.

Proponents

**1. Brian Carstens** presented this application for an AG community unit plan in the County, located 1 1/4 mile south of Hwy 33 on the east side of Hwy 77. The waiver requests have to do with existing configurations the state has given for farm and drive access. The waivers are also typical because they are outside the city limits and larger than one-acre lots. There are some prairie easements to the south of this property and occasionally they will burn, so the developer is considering dedicating a smoke easement so that the prairie can be burned in the future.

Newman noted the comment about water quantity. Mike DeKalb of Planning staff referred to the water report in the staff report which mentions that quantities are from 7-15 gpm. All of the wells, septic systems and lagoons will require Health Department approval lot by lot.

Steward noted that the outlot is to be continuous use for agriculture and he wondered whether it is in productive use at this time. Carstens indicated that to be true, and a large portion is in the floodplain.

Carlson referred to the letter from Nebraska Public Power District regarding the railroad right-of-way. Carstens has reviewed the letter and the developer has no objection. NPPD is just basically putting the developer on notice that that track may become active at some point in the future.

**2. Dan Schultz, Resources Coordinator, for Lower Platte South NRD**, testified, stating that the District is not a proponent nor opponent but wanted to provide additional information about conservation easements adjacent to this subdivision. In April of 1999, three conservation easements were recorded on 226 acres of virgin prairie and a small area of woodlands. The conservation easements are set up to provide certain uses and specifics on how the prairies will be managed. Prescribed fire is a management tool. The District anticipates burning these prairies every 3-5 years, which typically take place in the spring. As smoke drifts north into this subdivision, the District is concerned about future lawsuits or the landowners acquiring a burning injunction. The District would not be able to properly manage these grounds without the prescribed fire. Schultz requested that a condition be placed on the community unit plan and preliminary plat that requires that a perpetual agreement between the developer and/or future landowners and the owner of these conservation easements be executed prior to acquiring building permits that allows for smoke to periodically drift across the development.

Steward asked why the NPPD easement does not go further north, e.g. the railroad right-of-way, which could have been a natural manmade barrier. Schultz responded, stating that the District is only interested in acquiring easements over "virgin prairie". Steward suggested that when you are trying to protect natural eco-systems, you are always vulnerable to an edge condition if you stop right at the edge of the ecosystem. Schultz advised that in this particular case, the land actually drains from the south to the north and typically when talking about

ecosystems, that is something you need to think about—watershed conditions that could adversely impact the area. We have Hickman Road on the south side. There would be some vulnerability to development to the east but the District's grant and the direction by the Board was to look at acquiring the easements over the actual resource. We are hoping that the Planning Commission, with their authority, could help address some of those issues. Steward wondered how to avoid this kind of edge circumstance when trying to protect an ecosystem, because the District will need to burn right up to the line if that is part of the ecosystem. Schultz suggested that this is dealing with remnants as opposed to ecosystems. It is very difficult when you spend that kind of money to justify denying development rights on that property if the ecosystem is not there. Where do you stop? And Steward added, where do you draw the line for development in order to protect what you are really trying to protect?

### Opposition

**1. Bruce Kennedy**, 9200 W. Fletcher Street, Malcolm, testified in opposition. Going out to Hwy 77, turning down the Hickman Road, pulling into the abandoned state wayside area and looking out to the north toward Lincoln, we see a beautiful unobstructed prairie, with the Capitol Building in the background. This is a very good and natural experience. Three landowners and the NRD have had the wisdom and foresight to set this aside at a great expense to all of us. Now comes a housing development. We're looking out to the north across prairie to the Capitol building and what are we going to see? We are going to see houses instead of that beautiful view. A housing development in this location takes away from the general aesthetics of the area and makes it extremely difficult to manage. Smoke easements might be possible but there is still going to be a lot more problems managing this property with a housing development that abuts the easement.

Kennedy stated that he is not speaking for the Lancaster County Ecological Committee, but as a member of that Committee, he advised the Commission that this development was discussed at their last meeting. The same reservations he has here were expressed at that meeting. That committee, which makes recommendations to the County Board, recommended that this development be denied.

**2. Alan Beiermann**, Nebraska Public Power District, appeared to answer any questions related to the railroad right-of-way and potential conflicts in the future. NPPD is not in opposition or in support and does not take any position on this application. NPPD does have some railroad right-of-way and there are plans in place to possibly operate a railroad through that area. If the future development does not proceed in a proper manner we could have some conflict. Basically, we would use that rail to supply coal to our Sheldon Station plant. This just needs to be kept in mind as this project proceeds forward.

Carlson asked whether they would be reactivating existing rail or building new. Beiermann advised that there is no rail there now but NPPD does own that right-of-way and it is an

alternate route for coal transport. They own a 100' wide strip. It was cleared but no rail has been put down.

**3. Rick Brandt**, neighbor across the road to the west, R.R. #1, Roca, testified in opposition. This is a farm community with a hog facility in the neighborhood so odor should be considered as well. Right now the hog facility is within one mile and it could be closer. He does not know the containment number, but it is a large facility. There is also a smaller facility nearby.

**4. Betty Kraft** testified in opposition. She sold her prairie to the NRD about a year ago, and she is very happy with that decision because the prairie is so unique. It has never been turned. It is a "gem" sitting in here and we are thrilled that the other two owners wanted to put theirs in this NRD development. She is concerned because the prairie is private property and whether that privacy will be observed by the neighbors. They have a policy of no hunting and no trespassing on their part of the prairie. There is a lot of wildlife in the prairie.

Staff questions

Steward inquired as to the distance of this property from the Lincoln service jurisdiction. Mike DeKalb of Planning staff advised that the future service limit stops at Saltillo Road. This property is just outside the three-mile line from the City Limits. It is probably 2-3 miles from the future service limit. It is a salt tributary.

Steward asked whether this development is in conformance with the current Comprehensive Plan. DeKalb advised that it is in conformance because it is shown as AG and we have talked about clustering to preserve AG land. As far as the new Comprehensive Plan being developed now, the issues of preservation of prairie and buffering areas are still under discussion.

This property is about two miles from the Hickman jurisdiction.

Carlson inquired about the hog operations. DeKalb would not dispute that there are some hog operations in the area. He did not see any, however, when he drove the area so he does not believe they are in close proximity.

Response by the Applicant

With regard to the view, Carstens pointed out that along the existing fence line there are some large tree masses and the houses will probably be as tall or shorter than the tree mass which already block the view.

With regard to the rail line, Carstens would agree to a general note on the plan acknowledging that. There is already a general note on the plan and covenants that future lot owners will be

advised that this is a rural farm area and that normal and customary farm activities including cattle feeding are not a nuisance. He could expand that to include hog confinement.

Carstens is hopeful that the subdivision owners would stay off of other people's property.

Carstens proposed amendments to the conditions, by adding a new Condition #1.20: "Add a note to provide for a smoke easement with the NRD to accommodate burning as a prairie management tool." This would be prior to receiving building permits.

Carstens also suggested that Condition #3.5 be amended to require that the smoke easement be recorded with the Register of Deeds as well.

Public hearing was closed.

**COUNTY SPECIAL PERMIT NO. 190,**  
**DEER FIELD COMMUNITY UNIT PLAN.**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 9, 2002

Steward moved to deny, seconded by Carlson.

Steward believes the Commission has a responsibility to think more carefully about the protection that this NRD easement is intending to try to set up. In this particular area, we also have the future ahead of us and in terms of the acreage and the kind of build-through characteristics of being a couple of miles south of the future service limits seems to put this in a very vulnerable position. Steward stated that although his thoughts and concerns are leaning toward the "draft" comprehensive plan, he believes there is enough justification to be more cautious than approving this at this point.

Carlson commented that the more information we receive about the permit, the trickier it seems to get. There is active farming going on there so there is some use being made of the land. Steward's points are well taken.

Motion to deny failed 4-5: Hunter, Carlson, Newman, Steward voting 'yes'; Duvall, Bills, Taylor, Krieser and Schwinn voting 'no'.

Duvall moved to approve the staff recommendation of conditional approval, as set forth in the staff report dated December 19, 2001, with the amendments as requested by the applicant, seconded by Krieser and carried 5-4: Duvall, Bills, Taylor, Krieser and Schwinn voting 'yes'; Carlson, Hunter, Newman and Steward voting 'no'.

**COUNTY PRELIMINARY PLAT NO. 01018,**  
**DEER FIELD.**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

January 9, 2002

Duvall moved to approve the staff recommendation of conditional approval, as set forth in the staff report dated December 19, 2001, with the amendments as requested by the applicant, seconded by Krieser and carried 6-3: Duvall, Bills, Hunter, Taylor, Krieser and Schwinn voting 'yes'; Carlson, Newman and Steward voting 'no'.

**SPECIAL PERMIT NO. 692L,**  
**TABITHA NEW COMMUNITY COMMUNITY UNIT PLAN**  
**and**  
**PRELIMINARY PLAT NO. 01016,**  
**TABITHA NEW COMMUNITY 3<sup>RD</sup> ADDITION,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NO. 27<sup>TH</sup> STREET AND ENTERPRISE DRIVE.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 9, 2002

Members present: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn.

Staff recommendation: Conditional approval, except denial of the sidewalk waiver.

Jason Reynolds of Planning staff submitted a letter in opposition to the waiver of turn around radius, sidewalks and setbacks from Darryl Kile.

Proponents

**1. DaNay Kalkowski** appeared on behalf of **Southview, Inc.**, the developer. This proposal involves a preliminary plat and an amendment to the existing community unit plan for an area of about 4.3 acres. This area today is primarily undeveloped and located within the boundaries of the community unit plan which provides for elderly and retirement housing. This proposal adds 36 units of elderly and retirement housing. The developer has been involved with the Autumn Wood Homeowners Association and copies of the site plan and documents have been forwarded to the association. They have also met with the Board of Directors and received approval.

Like the balance of the community unit plan, Kalkowski advised that this development will serve the 55 and older age group. The site plan takes this into consideration. The developer has worked through all of the issues with staff, except the issue with respect to sidewalks



along the private roadways within the development. The plan shows sidewalks on only one side of the private roadways and the staff is requesting that the sidewalks be shown on both sides.

**2. Brian Carstens** reviewed the existing sidewalks and the proposed sidewalks on the map. They are proposing sidewalks on the east side of No. 26<sup>th</sup> Place, north side of Farmstead Road and this development's side of Enterprise Drive.

Kalkowski pointed out that in addition to the sidewalks on one side of private roadways, they are providing additional sidewalks internally to make the necessary connections.

Kalkowski submitted that sidewalks on one side of the private roadways is consistent with what has been done in the remainder of the community unit plan and similar to other patio home developments across the city. There is a list of these developments in the City where this has taken place. On all 9 properties dealing with the townhome or patio home concept, sidewalks were either totally waived or waived on one side of the private roadways. The applicant believes that the sidewalks shown, along with the connections to the recreational area within the development, will serve the elderly residents who will be purchasing these homes. The waiver helps keep the homes more affordable and reduces maintenance costs. This waiver has been granted in the past.

Steward wondered what the cost savings would be per unit. Kalkowski did not know what the developer's plans are for the cost of the townhomes. Reynolds offered that sidewalks are 10-12 dollars per lineal foot.

Carlson asked about the fence along No. 27<sup>th</sup> Street. Carstens explained that it will be a 6' high fence that will be staggered with street trees so that it is not one solid wall driving down the street.

Carlson noted the letter in opposition from a resident in the area and asked about the communication with the neighborhood. Kalkowski indicated that the representatives of Southview have met extensively with the Autumn Wood Homeowners Association and the Board of Directors and they do support the proposal.

### Opposition

**1. Don Eisele**, 5656 Enterprise Drive, agreed that Southview, Inc. has been up front with the Board of Autumn Wood, but there are some concerns. This project is in an area of an adult community of 55+ and he represents the Board, himself and several residents. We believe for the most part this is a good plan for the area; however, there were some things mentioned today that he was not aware of. He did not know about the fence; however, he would not be opposed. One of the big concerns is the sidewalk. There are a lot of people that do a lot of

walking in the neighborhood. We have in the past been forced to add sidewalks on sides of the streets where there were no sidewalks because the people did not want to cross Enterprise Drive or some of the other streets. Autumn Wood is not opposed to the waivers, except the sidewalk and the waiver of the setback on Enterprise. The homes to the north of this plat are set back 25' or more. The requested 20' setback will mean that the homes will stick out 5 more feet than any of the homes to the north. Eisele requested that the waiver of sidewalks be denied and that the setback adjustment on Enterprise Drive be denied. Otherwise, the Autumn Wood Homeowners Association is in favor of the proposal.

Staff questions

Schwinn asked for clarification of the right-of-way on Enterprise. Dennis Bartels of Public Works stated that it is a standard 60' residential street. Enterprise is a public platted road. The interior roads in the subdivision are private. There is not really a right-of-way on the private roads. There are easements over the roads with varying pavement widths based on how many units they are serving.

Reynolds added that there is a 35' public access easement over Farmstead Road. The pavement itself is 26' wide. There is a 30' public access easement on No. 26<sup>th</sup> Place with 21' wide pavement to the south and north of Farmstead.

Carlson asked for further discussion about the setback on Enterprise. Reynolds advised that the requested setback is reduced to 20'. This is zoned R-2 Residential, which has a 25' front yard setback requirement. In looking at the building placements, Carlson observed that moving them back 5' might be problematic. Reynolds agreed that it would create some problems if they were going to have the same number and type of units and the same layout.

**Don Eisele** requested to make further comments. He was not aware that those were going to be private roads. The Autumn Wood Homeowners Association dues pay for snow removal and that is going to undoubtedly raise the dues because of the amount of square footage those roads take up. He does not know why they should be private roads. Last year the Association paid over \$40,000 just for snow removal, which forced them to raise dues this last fall. Enterprise Drive is a bus route so that is another concern if houses are too close to the street.

Eisele suggested he be given the opportunity to go back to the board to see if they would agree to the waiver of the sidewalks because of the cost involved in snow removal.

Given the comments of Eisele, Kalkowski requested a two-week deferral to work with the neighborhood and clear up any confusion.

For future reference, Steward stated that he will not support a proposal for an age 55+ community that does not have sidewalks on both sides of the street. He thinks it is unconscionable. Irrespective of the precedents, he just believes that people who are temporarily able and some who are disabled need the benefit of mobility without having to be concerned about safety.

Newman agreed.

Steward moved to defer for two weeks, with continued public hearing and administrative action scheduled for January 23, 2002, seconded by Hunter and carried 9-0: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn voting 'yes'.

**COUNTY MISCELLANEOUS NO. 01014,**  
**A TEXT AMENDMENT TO THE LANCASTER COUNTY**  
**SUBDIVISION RESOLUTION REGARDING FINAL**  
**PLAT SUBMITTALS.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 9, 2002

Members present: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn.

Staff recommendation: Approval.

Mike DeKalb of Planning staff explained that this text amendment will bring the county regulations into conformance with the city regulations for final plat submittals.

There was no other public testimony.

Duvall moved approval, seconded by Bills and carried 9-0: Duvall, Bills, Hunter, Carlson, Taylor, Newman, Krieser, Steward and Schwinn voting 'yes'.

**SPECIAL PERMIT NO. 1941**  
**TO ALLOW STORAGE OF VEHICLES FOR**  
**SALE IN THE FRONT YARD, ON PROPERTY**  
**GENERALLY LOCATED AT**  
**NORTH 29<sup>TH</sup> AND CORNHUSKER HWY.**

January 9, 2002

This application was withdrawn by the applicant.

**CHANGE OF ZONE NO. 3195**  
**AND CHANGE OF ZONE NO. 3253,**  
**FROM B-2 PLANNED NEIGHBORHOOD BUSINESS**  
**DISTRICT TO R-3 RESIDENTIAL DISTRICT,**  
**and**  
**USE PERMIT NO. 133,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SO. CODDINGTON AVENUE AND WEST VAN DORN STREET.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

January 9, 2002

Members present: Duvall, Bills, Carlson, Taylor, Newman, Krieser, Steward and Schwinn; Hunter declared a conflict of interest.

Jason Reynolds of Planning staff submitted a letter from attorney Kent Seacrest requesting deferral until February 6, 2002, so that the annexation of this area can be heard at the same time.

Steward moved to defer, with continued public hearing and administrative action scheduled for February 6, 2002, seconded by Newman and carried 8-0: Duvall, Bills, Carlson, Taylor, Newman, Krieser, Steward and Schwinn voting 'yes'; Hunter declaring a conflict of interest.

Opposition

**1. Stacy Deisley**, 1940 West Hill Street, indicated this is the third meeting she has attended and the third time this has been deferred. She has taken off work three times now and she is getting very disappointed.

The Commissioners apologized for the inconvenience and explained that the request for deferral was submitted today, just prior to the meeting.

There being no further business, the meeting was adjourned at 4:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 23, 2002.